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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,666	09/27/2004	Hyung-Tae Lim	59520-00008	2354
7590 Joseph Hyosuk Kim JHK Law PO Box 1078 La Canada, CA 91012-1078				
			EXAMINER BEKKER, KELLY JO	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 05/07/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/509,666

**Applicant(s)**

LIM, HYUNG-TAE

**Examiner**

Kelly Bekker

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-6, 17-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6, 17-19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

Amendments made January 29, 2009 have been entered.  
Claims 2-6, 17-19, 21, and 22 are pending.

***Specification***

The objection to the specification due to the abstract has been withdrawn in light of applicant's amendments made January 29, 2009.

***Drawings***

The objection to the drawings, Figure 1 has been withdrawn in light of applicant's amendments made January 29, 2009.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The 112 2<sup>nd</sup> paragraph rejections due to the phrases, "large", "fragrant", "conventional powdered soup base", "Pollack", "additional wrapper", "A method of forming vegetable broth, said method comprising exposing the noodle product of claim 2 to water, heating the water, and controlling the amount of time the teabag is exposed to the water, wherein the amount of said noodle product added to the water is determined by the time of said exposure", "controlling the amount of time the teabag is exposed to the water", "wherein the amount of said noodle product added to the water is determined by the time of said exposure" and "A method of forming vegetable broth without vegetable residues, said method comprising exposing the noodle product of claim 2 to water and heating the water, wherein the teabag inhibits vegetable residue from entering said vegetable broth" have been withdrawn in light of applicant's amendments made January 29, 2009. The following 112 2<sup>nd</sup> paragraph rejections remain and/or necessitated by applicant's amendment made January 29, 2009.

Claims 2-6, 17-19, 21, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites, "A noodle product, comprising a teabag containing powders or pellets of vegetables comprising radish juice, bean sprout juice, green tea leaves, large green onion, green chili pepper, dried fragrant mushroom, sea tangle, garlic, onion, and dried Pollack shreds." The product as claimed is not clear. It is unclear as to how the tea bag is structurally related to the noodle product; it is unclear if the package is attached with the noodle product or if the noodle is contained within the package or if the noodle product is related to the package in some other way. There seems to be no connection between the noodle product and the tea bag.

Claim 3 recites, "A noodle product, comprising a teabag containing powders or pellets of vegetables comprising green tea leaves, a large green onion, green chili pepper, dried fragrant mushroom, sea tangle, garlic, onion, and dried Pollack shreds, wherein radish juice and bean sprout juice are mixed with a conventional powdered soup base to form a liquid mixture, which is then contained in an additional wrapper." The product as claimed is not clear. It is unclear as to how the tea bag is structurally related to the noodle product; It is unclear if the package is attached with the noodle product or if the noodle product is contained within the package or if the noodle product is related to the package in some other way; It is unclear how the additional wrapper with the liquid mixture is related to the noodle product; It is unclear if the additional wrapper with the liquid mixture is attached with the noodle product or if the noodle product is contained within the additional wrapper or if the noodle product is related to the additional wrapper in some other way. There seems to be no connection between the noodle product, the tea bag and the liquid mixture.

Claim 4 recites, "A noodle product, comprising a teabag containing powders or pellets of flakes comprising lyophilized large green onion, green chili pepper, dried fragrant mushroom, and vegetables comprising green tea leaves, sea tangle, garlic, onion, and dried Pollack shreds, wherein radish juice and bean sprout juice are mixed with a conventional powdered soup base to form a liquid mixture, or powders or pellets

of radish juice and bean sprout juice are mixed with a conventional powdered soup base to form a solid mixture, which is then contained in an additional wrapper." The product as claimed is not clear. It is unclear as to how the tea bag is structurally related to the noodle product; It is unclear if the package is attached with the noodle product or if the noodle product is contained within the package or if the noodle product is related to the package in some other way; It is unclear how the additional wrapper with the radish juice and bean sprout juice mixture is related to the noodle product; It is unclear if the additional wrapper with the mixture is attached with the noodle product or if the noodle product is contained within the additional wrapper or if the noodle product is related to the additional wrapper in some other way. There seems to be no connection between the noodle product, the tea bag and the radish juice and bean sprout juice mixture.

Claim 5 recites, "A noodle product, comprising a teabag containing flakes comprising lyophilized green tea leaves, a large green onion, green chili pepper and dried fragrant mushroom, and another tea bag containing powders or pellets of vegetables comprising sea tangle, garlic, onion, and dried Pollack shreds, wherein radish juice and bean sprout juice are mixed with a conventional powdered soup base to form a liquid mixture, or powders or pellets of radish juice and bean sprout juice are mixed with a conventional powdered soup base to form a solid mixture, which is then contained in an additional wrapper." The product as claimed is not clear. It is unclear as to how the tea bags are structurally related to the noodle product; It is unclear if the packages are attached with the noodle product or if the noodle product is contained within the packages or if the noodle product is related to the packages in some other way; It is unclear how the additional wrapper with the radish juice and bean sprout juice mixture is related to the noodle product; It is unclear if the additional wrapper with the mixture is attached with the noodle product or if the noodle product is contained within the additional wrapper or if the noodle product is related to the additional wrapper in some other way. There seems to be no connection between the noodle product, the tea bags and the radish juice and bean sprout juice mixture.

Claims 2-5 recite, "noodle materials consisting essentially of flour, potato starch in an amount of 5% to 10% of the total weight of said noodle materials, wheat flour...". It is unclear as to if the noodle material consists of two different flours, "flour" and "wheat flour" or as to if the noodle material consists of only one flour, "wheat flour"; It is unclear as to if the term "wheat flour" refers to the previously recited flour or if the two flours are distinguished and unrelated.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 6, 17, 18, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baek (KR 1995-016294 Abstract only) in view of the combination of Bittman (How to Cook Everything Simple Recipes for Great Food Pages 41-44, 51, 499-502, 524-525, and 601) and Taka (Green tea Soup- Raka Tea Garden Specialty Pages 1-4 <http://www.takateagarden.com.au/brewing.htm> August 25, 2001 Date obtained from <http://webarchive.org>) and Ito et al (JP 1991-366301 Abstract and Use only) and Yagou et al (JP 59-074960 Abstract only).

Baek teaches of a noodle soup package in which the powdered soup base is packaged separately. Baek teaches that the powdered soup base is contained within a tea-bag type of package so that the soup can be cooked without having to open the wrapper and the consumer can have a sense of security that the insoluble additives will not enter into the soup and be consumed. Refer to the Abstract.

Baek is silent to the powdered soup base as including radish juice, bean sprout juice, green tea leaves, green onions, green chili pepper, dried mushrooms, sea tangle, garlic, onion, and dried Pollack shreds as recited in claims 2-4, to the noodle composition and method of making the noodle as recited in claims 2-4, to the radish

juice and bean sprout juice as mixed with the soup base to form a liquid mixture which is contained in a second wrapper as recited in claims 3 and 4, to the amount of each of the ingredients as recited in claims 6, 17, and 18, to forming the vegetable broth by heating water and exposing the soup package to the water for a determined time as recited in claims 21 and 22.

As admitted by applicant, specification page 6 lines 10-13, at the time the invention was made, it was conventional for a soup base to include freeze dried, i.e. lyophilized, large green onions, green chili pepper, dried fragrant mushroom, sea tangle, and garlic.

As admitted by applicant, specification page 10 lines 16-19, at the time the invention was made conventional technique of preparing instant noodles comprising subjecting noodle materials consisting essentially of flour, potato starch, wheat flour, starch acetate, purified salt, sodium L-glutamate, refined sugar and palm oil to kneading, cutting, steaming, shaping, frying, cooling and drying.

Bittman teaches that soup is made by starting with water and adding means of making it taste better- usually meat, poultry, fish, or aromatic vegetables, and seasonings (Page 41 column 1). Bittman teaches that any vegetable can be added to stock and that stems of herbs and dried spices can be added to soup stock to improve flavor (Page 51 Table: Eight Simple Additions to Any Stock). Bittman teaches that stock is used to make soups taste better. Bittman teaches that stock is liquid in which solids have been cooked but wherein the solids are not included (page 41). Bittman teaches that onions are a common ingredient in soup stock (page 41 column 2). Bittman teaches that it is preferable to remove fat and oil from the stock (pages 42-43 Stock Techniques: Considering Fat). Bittman teaches that any leftovers can be included in soups (Page 44). Bittman teaches that vegetables, including radishes can be added to the stock (Page 44 The Basics of Soup and Page 601 Radishes). Bittman teaches that fruit flavors can be added as juice, such as lemon juice (Page 52 Lime and Garlic Soup). Bittman teaches that beans and bean sprouts are a good source of protein that can be used in cooking soups (Pages 499-502 and 524-525).

Taka teaches of green tea soup which includes a bag of green tea, onions, and cooked slices of fish.

Ito et al (Ito) teaches noodles are infused with flavor during steaming and are not be fried in order to form noodles which are soup flavored and have improved smoothness (Abstract and Use).

Yagou et al (Yagou) teaches that to prepare noodles that can be easily reconstituted in water and have excellent palatability, 1-30% starch, including potato starch is added to the raw noodle composition either as starch or within flour.

Regarding the ingredients in the powdered soup base it would have been obvious to one of ordinary skill in the art at the time the invention was made to include lyophilized, large green onions, green chili pepper, dried fragrant mushroom, sea tangle, and garlic in order to form a conventional flavored soup base. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to include other known soup ingredients, including radish juice (inherently contained in radish), bean sprout juice (inherently contained in bean sprouts), green tea leaves, onion, and dried fish, such as Pollack fish, as taught by Bittman and Taka, in order to obtain a soup with the flavor resulting from the respective known soup flavoring ingredients. One would have been further motivated to add an amount of the said ingredient depending on the intensity of the respective ingredients and to include a form of the ingredients, freeze dried powders or liquids depending on which form was readily available. Further, attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows: This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and



useful function. In re Benjamin D. White, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221. Regarding the radish juice and bean sprout juice as mixed with the soup base to form a liquid mixture which is then contained in a second wrapper, as stated above, one would have been motivated to use the form of the ingredients, freeze dried powders or liquids depending on which form was readily available. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the ingredients within separate wrappers and/or tea bags to keep them separated. One would have been motivated to keep specific ingredients separated if the products reacted with one another and/or if different intensities of the products were desired. It would have been further obvious to include all of the ingredients in one wrapper for sale. To do so would have been obvious in order to form a broth which could be sold for use as a soup base which contained all the desired ingredients.

Regarding the noodle composition and method of making the noodle, it would have been obvious to one of ordinary skill in the art at the time the invention was made use a conventional technique and composition for the noodle of Baek, including preparing instant noodles comprising subjecting noodle materials consisting essentially of flour, potato starch, wheat flour, starch acetate, purified salt, sodium L-glutamate, refined sugar and palm oil to kneading, cutting, steaming, shaping, frying, cooling and drying in order to form a conventional and well accepted noodle product as admitted by applicant. It would have been further obvious for the noodle to be infused with flavor during steaming and to not be fried in order to form noodles which are soup flavored and have improved smoothness as taught by Ito. It would have been further obvious for the noodle to include 0-30% starch, including potato starch, in the conventional noodle composition in order to form a final noodle product that could be easily reconstituted and had excellent palatability as taught by Yagou.

Regarding forming the vegetable broth by heating water and exposing the soup package to the water for a determined time, Bittman teaches that the basis for soup or the stock is formed by heating water with solids which are then removed from the stock. It would be well known in the art at the time the invention was made to form vegetable

broth by heating water and exposing solid ingredients until the desired flavor is obtained in the water. To do so would have been obvious in order to get a good flavor broth for a soup base and would not impart a patentable distinction to the claims. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to remove the tea bag containing the soup flavorings once the desired flavor broth was obtained in order to prevent the broth from being over flavored.

Claims 5 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baek (KR 1995-016294 Abstract only) in view of the combination of Bittman (How to Cook Everything Simple Recipes for Great Food Pages 41-44, 51, 499-502, 524-525, and 601) and Taka (Green tea Soup- Raka Tea Garden Specialty Pages 1-4 <http://www.takateagarden.com.au/brewing.htm> August 25, 2001 Date obtained from <http://web.archive.org>) and Kim (KR 20-0174363 Abstract only) and Ito et al (JP 1991-366301 Abstract and Use only) and Yagou et al (JP 59-074960 Abstract only).

Baek teaches of a noodle soup package in which the powdered soup base is packaged separately. Baek teaches that the powdered soup base is contained within a tea-bag type of package so that the soup can be cooked without having to open the wrapper and the consumer can have a sense of security that the insoluble additives will not enter into the soup and be consumed. Refer to the Abstract.

Baek is silent to the powdered soup base as including radish juice, bean sprout juice, green tea leaves, green onions, green chili pepper, dried mushrooms, sea tangle, garlic, onion, and dried Pollack shreds as recited in claim 5, to the noodle composition and method of making the noodle as recited in claim 5, to the radish juice and bean sprout juice as mixed with the soup base to form a liquid mixture which is contained in an additional wrapper as recited in claims 5, to the soup base as included in multiple tea bags as recited in claim 5, and to the amount of each of the ingredients as recited in claims 19.

As admitted by applicant, specification page 6 lines 10-13, at the time the invention was made, it was conventional for a soup base to include freeze dried, i.e.

lyophilized, large green onions, green chili pepper, dried fragrant mushroom, sea tangle, and garlic.

As admitted by applicant, specification page 10 lines 16-19, at the time the invention was made conventional technique of preparing instant noodles comprising subjecting noodle materials consisting essentially of flour, potato starch, wheat flour, starch acetate, purified salt, sodium L-glutamate, refined sugar and palm oil to kneading, cutting, steaming, shaping, frying, cooling and drying.

Bittman teaches that soup is made by starting with water and adding means of making it taste better- usually meat, poultry, fish, or aromatic vegetables, and seasonings (Page 41 column 1). Bittman teaches that any vegetable can be added to stock and they stems of herbs and dried spices can be added to soup stock to improve flavor (Page 51 Table: Eight Simple Additions to Any Stock). Bittman teaches that stock is used to make soups taste better. Bittman teaches that stock is liquid in which solids have been cooked but wherein the solids are not included (page 41). Bittman teaches that onions are a common ingredient in soup stock (page 41 column 2). Bittman teaches that it is preferable to remove fat and oil from the stock (pages 42-43 Stock Techniques: Considering Fat). Bittman teaches that any leftovers can be included in soups (Page 44). Bittman teaches that vegetables, including radishes can be added to the stock (Page 44 The Basics of Soup and Page 601 Radishes). Bittman teaches that fruit flavors can be added as juice, such as lemon juice (Page 52 Lime and Garlic Soup). Bittman teaches that beans and bean sprouts are a good source of protein that can be used in cooking soups (Pages 499-502 and 524-525).

Taka teaches of green tea soup which includes a bag of green tea, onions, and cooked slices of fish.

Kim teaches of a package for soup which allows the user to adjust the amount of the additive to the ramen as well as the soup itself. Kim teaches of a divided package for separating various additives. Refer to the abstract.

Ito et al (Ito) teaches noodles are infused with flavor during steaming and are not be fried in order to form noodles which are soup flavored and have improved smoothness (Abstract and Use).

Yagou et al (Yagou) teaches that to prepare noodles that can be easily reconstituted in water and have excellent palatability, 1-30% starch, including potato starch is added to the raw noodle composition either as starch or within flour.

Regarding the ingredients in the powdered soup base it would have been obvious to one of ordinary skill in the art at the time the invention was made to include lyophilized, large green onions, green chili pepper, dried fragrant mushroom, sea tangle, and garlic in order to form a conventional flavored soup base. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to include other known soup ingredients, including radish juice (inherently contained in radish), bean sprout juice (inherently contained in bean sprouts), green tea leaves, onion, and dried fish, such as Pollack fish, as taught by Bittman and Taka, in order to obtain a soup with the flavor resulting from the respective known soup flavoring ingredients. One would have been further motivated to add an amount of the said ingredient depending on the intensity of the respective ingredients and to include a form of the ingredients, freeze dried powders or liquids depending on which form was readily available. Further, attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows: This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. *In re Benjamin D. White*, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

Regarding the noodle composition and method of making the noodle, it would have been obvious to one of ordinary skill in the art at the time the invention was made

use a conventional technique and composition for the noodle of Baek, including preparing instant noodles comprising subjecting noodle materials consisting essentially of flour, potato starch, wheat flour, starch acetate, purified salt, sodium L-glutamate, refined sugar and palm oil to kneading, cutting, steaming, shaping, frying, cooling and drying in order to form a conventional and well accepted noodle product as admitted by applicant. It would have been further obvious for the noodle to be infused with flavor during steaming and to not be fried in order to form noodles which are soup flavored and have improved smoothness as taught by Ito. It would have been further obvious for the noodle to include 0-30% starch, including potato starch, in the conventional noodle composition in order to form a final noodle product that could be easily reconstituted and had excellent palatability as taught by Yagou.

Regarding the radish juice and bean sprout juice as mixed with the soup base to form a liquid mixture which is then contained in a second wrapper and the soup base as included in multiple tea bags, as stated above, one would have been motivated to use the form of the ingredients, freeze dried powders or liquids depending on which form was readily available. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the ingredients within separate wrappers and/or tea bags to keep them separated. One would have been motivated to keep specific ingredients separated if the products reacted with one another and/or if different intensities of the products were desired as taught by Kim. It would have been further obvious to include all of the ingredients in one wrapper for sale. To do so would have been obvious in order to form a broth which could be sold for use as a soup base which contained all the desired ingredients.

### ***Response to Arguments***

Applicant's arguments filed January 29, 2009 have been fully considered but they are not persuasive.

Applicant argues that the references of record do not teach the newly added noodle limitations. Applicant's argument is not convincing. The new limitations have

been addressed in the new rejections above which were necessitated by the amendment.

Applicant argues that the references of record do not teach dried Pollack or specific vegetables as instantly claimed. Applicant's argument is not convincing as the references of record teach of dried fish and the instantly claimed vegetables. To choose a specific type of fish in the soup flavoring would depend on the final product and the flavoring of the final product desired and would not impart a patentable distinction to the claims. Attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows: This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coercion or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. *In re Benjamin D. White*, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

In response to applicant's argument that Bittman, Baek, and Taka are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all the references are in the field of applicant's endeavor, soup ingredients and methods of making soups. Furthermore, as the references are all within the same endeavor one would expect that the teachings of the references could be combined with a reasonable expectation of success.

Specifically regarding applicant's argument that Bittman teaches away from powdered flavorings and as such one would not have a reasonable expectation of success when combining the teachings of Bittman with a powdered soup mix. Applicant's argument is not convincing as Bittman teaches of soup in general and teaches that fresh ingredients, liquids, and dried seasoning can all be added to soup stock to improve flavor (Page 51 Table: Eight Simple Additions to Any Stock). Thus, the teachings of Bittman do not teach away from powdered flavorings or from selecting an appropriate form of ingredients, whether it be fresh, liquid, or dried and one of ordinary skill in the art would have a reasonable expectation of success when combining the teachings of the soup art.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/  
Primary Examiner  
Art Unit 1794

/Kelly Bekker/  
Examiner  
Art Unit 1794